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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/673,342	09/30/2003	Karen Swider-Lyons	84527-US1	8471
26384 7590 08/12/2008 NAVAL RESEARCH LABORATORY ASSOCIATE COUNSEL (PATENTS) CODE 1008.2 4555 OVERLOOK AVENUE, S.W. WASHINGTON, DC 20375-5320				
EXAMINER				
MAPLES, JOHN S				
ART UNIT		PAPER NUMBER		
1795				
MAIL DATE		DELIVERY MODE		
08/12/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/673,342

Applicant(s)

SWIDER-LYONS ET AL.

Examiner

John S. Maples

Art Unit

1795

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 May 2008.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-53 is/are pending in the application.
4a) Of the above claim(s) 2-9-15 and 26-53 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1, 3-8, 16-25 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/S508)
Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

1. Claims 2, 9-15 and 26-53 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species and invention, there being no allowable generic or linking claim.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

3. Claims 1, 3, 4, 6-8, 24 are rejected under 35 U.S.C. 102(a) as being anticipated by Wartena et al. article. (Wartena)

Reference is made to the entire article to Wartena and more specifically the Abstract in Wartena along with the first four pages of the article and the next to the last page. These portions of Wartena teach a hydrous ruthenium oxide cathode on platinum along with a platinum anode in a device that powers a load.

It is noted that applicants have filed Rule Affidavits under 35 USC 1.132 by Ryan C. Wartena on February 12, 2008, which affidavit was incomplete and on May 30, 2008, which affidavit was not signed. Because of these errors, the affidavits cannot be considered to overcome the prior art of record and thus the rejection of the claimed subject matter is proper as outlined above and the in the rest of this office action.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 5 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wartena taken in view of Zheng et al.-US 6,097,588. (Zheng)

The only claimed feature not shown by Wartena are the carbon support and the polymer electrolyte. It would have been obvious to have used a carbon support because of the cost savings of such material. Zheng teaches a polymer electrolyte in a device using hydrous ruthenium oxide as the cathode. To have thus used the polymer electrolyte of Zheng in Wartena would have been obvious so that the same would provide a non-liquid electrolyte that would not leak from the device container.

7. Claims 17-19 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wartena in view of the 202nd Meeting article dated October 2002. (Meeting)

The Wartena article does not teach the device used where ambient air contacts elements of the device. The Meeting article discloses the use of hydrous ruthenium oxide in an atmospheric environment. To thus utilize the device of Wartena in the atmosphere as shown by Meeting would have been obvious for cost savings in utilizing the components of the atmosphere.

8. Claims 20-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wartena in view of Evans-US 5,737,181. (Evans)

Wartena teaches all of the claimed subject matter except for the substrate being titanium. Evans sets forth in columns 1-3 the use of titanium as a substrate for a metal oxide, such as ruthenium oxide, in a device. To thus use in the cathode of Wartena the titanium substrate of Evans would have been obvious to one of ordinary skill in this art at the time the invention was made because of the improved strength and properties of this metal.

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John S. Maples whose telephone number is 571-272-1287. The examiner can normally be reached on Monday-Friday, 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Ryan can be reached on 571-272-1292. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/John S. Maples/

John S. Maples
Primary Examiner
Art Unit 1795

JSM8-9-2008

Application Number**Application/Control No.**

10/673,342

**Applicant(s)/Patent under
Reexamination**

SWIDER-LYONS ET AL.

Examiner

John S. Maples

Art Unit

1795